IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10749 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE ROAD TRANSPORT CORPORATION - Petitioner(s)

Versus

BABUBHAI RAMCHANDBHAI CHAUHAN - Respondent(s)

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Appearance :

MR HARDIK C RAWAL for Petitioner(s) : 1,
MR GK RATHOD for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 30/09/2005

ORAL JUDGMENT

In the present petition, the petitioner ST Corporation has challenged the legality of the award dated 25th March, 2004.

2. The respondent was discharging his duties as

conductor with the employer ST Corporation. On 9.4.99 when the respondent was discharging his duties as Conductor, the bus was checked by the Checking Squad. It was found that several passengers of some groups were not issued tickets of full denominations though full fare was collected from them. On the basis of these charges, a charge-sheet came to be issued against the respondent. Upon conclusion of the inquiry, the employer imposed the punishment of dismissing the respondent from service. The respondent challenged his dismissal order before the Labour Court.

3. The Labour Court allowed the reference in part, set aside the order of dismissal, ordered reinstatement of the workman without backwages and provided for punishment of withholding of two increments. The petitioner has challenged the said award passed by the Labour Court.

4. In the impugned award, the Labour Court observed that the workman has not challenged the legality of the departmental inquiry. It was also observed that there were several misconducts proved against the respondent in the past. This fact was, however, discarded by the Labour Court from consideration by observing that for the

past offences, the workman has been punished at the relevant time. It is, therefore, not necessary to take them into consideration.

5. Despite the respondent not challenging the legality of the departmental inquiry, the Labour Court observed that the inquiry was completed only in one day which shows that the workman was not given sufficient opportunity to defend himself. The Labour Court also observed that during checking, statements of other passengers were not recorded. The Labour Court, however, did not refer to the statements of the driver and two passengers which were recorded by the reporter.

5.1 Though the Labour Court came to the conclusion that charges are not validly proved, the Labour Court found it appropriate to impose punishment of withholding of two increments considering the past misconducts of the workman.

6. The approach and the conclusions of the Labour Court are intriguing. If the workman had not committed any misconduct, there was no question of imposing any punishment on the basis of the past record alone. On the

other hand, if the charge was validly proved, considering the nature of charge and the long history of repeated misconducts of such nature in past, there was no possibility of interfering with the order of punishment.

7. Learned advocate Shri Raval appearing for the petitioner has correctly pointed out that the reporter had examined the driver as well as two of the passengers who were issued tickets for deficient fare. All these three witnesses had stated that the conductor had not issued full tickets. Thus the charge of collecting full fare but not issuing full tickets to the passengers was validly proved during the course of inquiry. In that view of the matter, it was not open for the Labour Court to interfere with the factual findings arrived at by the employer in the course of inquiry. There was no material on record to permit the Labour Court to interfere with the factual findings.

8. The only question that remained before the Labour Court was that of quantum of punishment. As noted earlier, charge against the respondent was that of not issuing tickets for the full fare though fare was collected. The charge has an element of doubtful

integrity. In a relatively short career of 11 years, the respondent had committed 26 misconducts, some of them pertained to remaining unauthorizedly absent and rest pertaining to carrying ticketless passengers. It was, therefore, not open for the Labour Court to ignore the past service record while exercising power under section 11-A of the Industrial Disputes Act. The Labour Court erred in disturbing the quantum of punishment considering the proved charges against the workman and the past service record.

9. The impugned award of the Labour Court is therefore required to be and is hereby set aside. Rule is made absolute accordingly with no order as to costs.

(Akil Kureshi, J.)

(vjn)